

UNPUBLISHED

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVE ANDREW HUERTA,

Defendant.

No. **CR01-3055-MWB**

**REPORT AND RECOMMENDATION
ON MOTION TO SUPPRESS**

I. INTRODUCTION

On October 17, 2001, the defendant Steve Andrew Huerta was indicted by the grand jury on one count of possession of methamphetamine with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A). (Doc. No. 1) A superseding indictment was issued on January 11, 2002, which added a count of conspiracy to distribute methamphetamine, in violation of 21 U.S.C. § 846. (Doc. No. 23). On December 3, 2001, Huerta filed a Motion to Suppress and accompanying brief (Doc. Nos. 15 & 19). The plaintiff (the “Government”) filed its resistance on January 2, 2002 (Doc. No. 21).

Pursuant to the Trial Scheduling and Management Order entered November 9, 2001 (Doc. No. 9), motions to suppress in this case were assigned to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), for the filing of a report and recommended disposition. Accordingly, on February 8, 2002, the court held a hearing on the suppression motion. Assistant U.S. Attorney C.J. Williams appeared for the Government. Huerta appeared in person with his attorney, Patrick Parry. The Government

offered the testimony of U.S. Postal Inspector Kevin Marshall, and Mason City Police officers David Tyler and Michael McKelvey.

The court has considered the evidence and read the parties' briefs, and now considers the motion ready for decision.

II. FACTUAL BACKGROUND

On September 18, 2001, Inspector Marshall was contacted by Officer Logan Wernet of the Iowa Task Force in Mason City, Iowa, about a suspicious package received by Mason City postal authorities. According to Officer Wernet, a letter carrier had been suspicious about a package sent from Stockton, California, to Steve Huerta at 105 15th Street Northeast, Mason City, Iowa, an address on the carrier's route, and he had contacted the Task Force.¹ After discussing the matter, Marshall and Wernet decided to conduct a canine search on the package. The canine search was negative for drugs.

Marshall decided to travel to Mason City on the next day, September 19, 2001, to "intercept" the package.² When Marshall arrived in Mason City, he retrieved the package from a postal supervisor, and took the package to the Task Force office. Inspecting the package, he noted it was, in fact, postmarked Stockton, California. Marshall was aware that Stockton was a source area for drugs. The package had no return address, and the hand-written address label was to Steve Huerta, 105 15th Street Northeast, Mason City, Iowa. The package's dimensions were 18" x 18" x 12", and it was heavily taped. At the

¹Wernet did not testify at the suppression hearing, but Task Force Officer Tyler testified the letter carrier had called the Task Force because he thought the package was "strange," and he thought the officers should look at it. The letter carrier also was aware of Huerta because of Huerta's extensive arrest record.

²The court finds the package would have been delivered on the 18th if it had not been intercepted by law enforcement authorities. It is clear from the record that the package was in the hands of the letter carrier for delivery to Huerta on the 18th.

top of the package, there was a space where Marshall could see through the tape, and he observed what appeared to be “some type of a cellophane wrapping or some type of a wrapping material.”

Marshall then consulted the office of the United States Attorney for the Northern District of Iowa, and decided to make a controlled delivery of the package in hopes of obtaining a consent to search. Marshall put on the uniform of a postal carrier, took possession of the mail for the 100 block of 15th Street Northeast, and at about two o'clock in the afternoon, started to deliver the mail. At 2:05 p.m., he delivered several pieces of mail to the Huerta residence, along with a notice that Huerta had a package at the post office. Within seconds after putting the mail through the mail slot in the front door of the Huerta residence, Huerta and another man came out the door, and Huerta asked Marshall about the package. Marshall responded that the package was at the post office, but Huerta did not seem to understand and continued to ask where the package was. Marshall explained that the package could be picked up at the post office. Huerta then asked if he would have problems picking up the package without identification. Marshall advised him to speak with a post office supervisor.

Marshall continued delivering mail in the block, and four or five minutes later observed Huerta, another male, and a child enter a small brown pickup truck and drive off toward the post office. Marshall then drove to the post office, where he changed from his letter carrier uniform into civilian clothing.

In the meantime, other officers observed Huerta drive to the Mason City post office, where Huerta parked his truck on a public street in front of the building. Huerta, the other male, and the child went inside, and a few minutes later, they came out of the post office with Huerta in possession of the package. Officer Tyler walked up to Huerta and asked

Huerta how he was doing.³ Huerta threw the package in the back of the truck and walked up to Tyler. Tyler suspected the other male was “Bubba,” a man believed to be a narcotics associate of Huerta’s from Stockton, California.⁴ Tyler also was aware of Huerta’s extensive arrest record, and knew Huerta had been involved in two shootings. Accordingly, with the assistance of another officer, he conducted a pat-down search of Huerta and the other male, but nothing was found. After the search, the other male asked for permission to take the child to the bathroom, and the officers agreed. Huerta then asked if he could leave, and Tyler said, “No, there is a guy inside I would like to have you talk to, it would only take a couple minutes.” Other than being told he could not leave, Huerta was not restrained in any way. At about that time, Officer Wernet came out of the post office and told Huerta there was a postal inspector inside the post office who would like to speak with him.

A short time later, Marshall left the post office and walked out to Huerta’s truck. Huerta was standing on the sidewalk near the rear of his vehicle, with the three other officers standing in the vicinity. Marshall immediately identified himself to Huerta, and advised Huerta he would like consent to search the package Huerta had just picked up. Without hesitation, Huerta responded to Marshall, “Yes, you can open the parcel.” Huerta did not act nervous or fidgety, and did not appear to be under the influence of alcohol or other drugs.

Marshall retrieved the package from the truck and set it on the sidewalk in front of Huerta. Marshall asked Huerta if he was expecting a package, and he responded he was not. Marshall then asked if he was expecting something from California, and Huerta said he did not think so. Marshall next asked Huerta if he knew what was inside the package,

³Tyler and Huerta had known each other for 15 years.

⁴This suspicion later proved to be incorrect.

and Huerta said no. Marshall then opened the package while the other three officers stood watching from four or five feet away.

Inside the package, Marshall found a green, brown, and yellow box. Marshall opened this box and found a small tapestry-covered footstool wrapped in plastic. He removed the plastic and opened the footstool, and found a large oblong block wrapped in carbon paper and cellophane. The block later was found to contain methamphetamine. At no time before or during the search did Huerta withdraw his consent or attempt to stop the search.

The Task Force officers were well aware of Huerta before this incident. He had been arrested more than 20 times between 1984 and 2001, and had been convicted on several felony charges. On May 20, 1998, police received a neighborhood complaint that there was a great deal of traffic at Huerta's house, both day and night. On September 9, 1999, a confidential informant advised the Task Force that a person named "Bubba" from Stockton, California, was bringing methamphetamine into Mason City, about 10 pounds at a time, and was staying with Huerta. This informant had provided the officers with reliable information in the past that had been corroborated. The officers knew "Bubba" actually was Alfredo Chavez, and there was an outstanding warrant for his arrest on federal drug charges in California.

On March 9, 2000, a federal inmate, James Johnson, began cooperating with law enforcement. Johnson stated that he, Huerta, and Steve Springer had taken trip to Stockton, California, to buy methamphetamine, but they were unsuccessful because they had gambled away their money on the trip. After arriving in Stockton, Bubba had put a gun to Huerta's head for not having the money. Johnson said Bubba and his California associates had obtained a retired drug dog to check on packages of drugs they were intending to send out. Officer Tyler testified Johnson previously had provided credible information that had proved to be reliable.

On May 16, 2000, the Task Force received an anonymous call from a person who said Huerta and a woman named Vicky Flores had planned to marry, but Flores had called off the wedding because Huerta was dealing drugs. On May 18, 2000, the Task Force received an anonymous call from a different a person who reported Huerta was selling methamphetamine to three individuals named by the caller.

On October 15, 2000, Huerta was arrested in Nebraska, for possession of four pounds of methamphetamine, which officers found in a locker at a bus terminal after Huerta had given them consent to search his luggage and the locker.⁵ On October 5, 2001, a confidential informant, described by Marshall as credible, advised that he/she had purchased approximately 18 ounces of methamphetamine from Bubba. Marshall testified this information was corroborated.

Huerta is 35 years old. He completed the 11th grade, and he obtained a G.E.D. while in custody on state charges.

III. LEGAL ANALYSIS

Huerta argues it was unlawful to detain him at the post office so Inspector Marshall could request consent to search the package, and therefore, Huerta's subsequent consent also was unlawful under *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417, 9 L. Ed. 2d. 441 (1963). The Government responds that the officers had a reasonable, articulable basis for detaining Huerta until the consent to search could be requested.

"A trained officer may properly infer from a collection of circumstances, no one of which itself indicates illegal activity, that further inquiry is appropriate." *United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir. 1994) (*dicta*). In considering the right of a police officer to stop and inquire of a person engaging in suspicious activity, the United States

⁵For some reason not explained in the record, charges against Huerta in connection with this incident were dropped.

Supreme Court explained in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), that the standard of review is whether

the facts available to the officer at the moment of the seizure or the search warrant a man of reasonable caution in the belief that the action taken was appropriate[.] Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction. And simple good faith on the part of the arresting officer is not enough. . . . If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be “secure in their persons, houses, papers and effects,” only in the discretion of the police.

Terry, 392 U.S. at 21-22, 88 S. Ct. at 1880 (footnote, internal quotation marks, citations omitted); accord *United States v. Jones*, 269 F.3d 919 (8th Cir. 2001).

The court finds the facts available to the officers in this case meet the *Terry* requirements for the officers to stop Huerta and question him about the box. Huerta argues the officers lacked probable cause to detain him after the drug dog failed to “hit” on the box. However, the totality of the other information available to the officers regarding Huerta’s suspected drug activities and the postmark on the box provided reasonable suspicion for them to stop Huerta and inquire, and that was all they needed.

As to the length of the detention, “an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” *United States v. Willis*, 967 F.2d 1220, 1224 (8th Cir. 1992) (citing *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1325-26, 75 L. Ed. 2d 229 (1983)).

In the present case, Huerta was detained very briefly to allow the officers to ask for his consent to search the package and, once he consented, for the search to take place. The court finds no violation of Huerta's rights in the circumstances of his detention.

Finally, although not raised by Huerta in his motion or supporting brief, the court finds nothing in the record to call into question the validity of Huerta's consent to search the box. There is no evidence he was in any way coerced, or that his consent otherwise was anything other than completely voluntary. *See United States v. Smith*, 260 F.3d 922, 923 (8th Cir. 2001); *Ramos, supra*, 42 F.3d at 1164 (citing *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)). Thus, even if Huerta's detention had been illegal, his voluntary consent to search the box would have purged the primary taint. *Ramos, id.*

For these reasons, Huerta's motion to suppress should be denied.

IV. CONCLUSION

IT IS RECOMMENDED, unless any party files objections⁶ to the Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), within ten (10) days of the service of a copy of this report and recommendation, that the

⁶Objections must specify the parts of the report and recommendation to which objections are made. Objections also must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).

defendant's motion to suppress evidence (Doc. No. 15) be **denied**, in accordance with the court's recommendations set forth above.

IT IS SO ORDERED.

DATED this 26th day of February, 2002.

PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT